



## Supporters Of Medicaid Transportation Coverage Seek Congress' Help

By Emily Martin

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Advocates for non-emergency transportation benefits in Medicaid are pressing Congress to protect those benefits after CMS signaled this week that it is still considering whether the benefits should remain mandatory for states.

In the regulatory agenda for fall 2019 that the administration published Wednesday (Nov. 20), CMS indicates that it will soon release a request for information on the necessity of a longstanding regulation that requires state Medicaid programs to assure transportation for beneficiaries to travel to non-emergency medical appointments.

“The request for information will seek public input on whether the Assurance of Transportation in the Medicaid program remains administratively necessary given the delivery of healthcare both in terms of technological advances and the commercial market design,” the listing on the regulatory agenda says. The listing goes on to say that the agency will request stakeholder comments on “the merits of the transportation assurance on selected populations,” such as children, pregnant women, and individuals considered medically frail.

CMS plans to issue the RFI next month, according to the agenda listing.

**The plan for an RFI comes nearly five months after CMS delayed a plan to issue a proposed rule** that was widely expected to roll back the regulatory requirement for states to cover NEMT. In the fall 2018 regulatory agenda, CMS slated that proposed rule for release in the spring of this year, but after opposition from stakeholders and members of Congress, CMS [postponed the targeted release date to 2021](#).

Advocates for NEMT continue to urge Congress to block CMS from proceeding with any rollback of NEMT benefits, and they are eyeing two avenues. One avenue is the passage of bipartisan legislation that would enshrine the regulation on mandatory NEMT coverage into law. The other avenue is the passage of a spending limitation -- [approved in June by the House Appropriations Committee](#) -- that would bar CMS from spending money on its proposed rule.

Sens. Johnny Isakson (R-GA) and Sherrod Brown (D-OH) introduced a bill Nov. 13 that seeks to codify the regulation requiring state Medicaid programs to cover NEMT. A sister bill in the House has been sitting in committee since July. Brown is prioritizing passing the provision in an end-of-year spending package, his office said.

“I hope we can stop the agency with legislation before the end of the year,” said Marsha Simon, the president of MJ Simon & Co. The health care lobbying firm’s clients include LogistiCare, the nation’s largest benefits manager of NEMT services.

At the same time, Simon is also advocating for the inclusion of the spending limitation in a final Labor-HHS spending package. The limitation would block CMS from using any funds to publish the proposed

rule, while calling for a study by the National Academy of Medicine on the impact of a rollback of NEMT on beneficiaries.

**It is difficult to predict CMS' plans on the proposed rule**, Simon said. The delay earlier this year suggested that no action would be taken until 2021, but the agency now expects to issue an RFI next month.

Simon added that the imminent publication date of the RFI may make legislation protecting NEMT a higher priority for the House and Senate.

“[Advocates] breathed a sigh of relief believing the rule would roll out after the election in 2021, but to see actions will be occurring next month is galvanizing,” Simon said.

CMS did not respond to a question from *Inside Health Policy* about how the RFI publication would affect the timeline of the proposed rule; however, advocates previously said that the postponement until 2021 is not binding since the agency could still issue the proposed rule at any time.

Simon also said it's unclear to what degree the rule would roll back the longstanding NEMT regulation since the agency has used generalized language about allowing states to drop the benefit carte blanche. President Trump's budget proposals for fiscal 2019 and 2020 called for making NEMT an optional benefit, while CMS originally included the rule in its fall 2018 regulatory agenda.

An agency spokesperson said the RFI is under development.

**“The agency will consider all public feedback as part of any potential future rule-making process and has not made any final decisions,”** the spokesperson said.

While the RFI is less direct than a proposed rule, the RFI may be a precursor to the rule. However, Simon said the RFI would give advocates the ability to provide feedback to CMS and time to work on passing legislation to block a potential rule.

An estimated 10% of Medicaid beneficiaries rely on NEMT for rides to kidney dialysis appointments, substance abuse treatment programs, preventive services and other routine care. The benefit is reserved for beneficiaries who have no access to reliable transportation, and advocates say a rollback of the regulation requiring NEMT could harm beneficiaries, managed care plans and state budgets.

Even if the agency does not move forward with a rule after publishing the RFI, CMS can still grant waivers to states allowing them to eliminate NEMT for some beneficiaries. -- *Emily Martin* ([emartin@jwpnews.com](mailto:emartin@jwpnews.com))

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